Office - Supreme Court, U.S.
FILED
NOV 29 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-728

In the Supreme Court of the United States

OCTOBER TERM, 1982

COMPUTER SCIENCES CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Heike v. *United States*, 217 U.S. 423 3

Roche v. *Evaporated Milk Association*, 319 U.S. 21 5

Statutes and rule:

18 U.S.C.:

Section 287 ..... 1, 3, 4
Section 1341 ..... 2, 3, 4
Section 1343 ..... 2, 4
Section 1952 2
Section 1961 *et seq.* 4
Section 1962(c) 2
Section 1962(d) 2
Section 1963(a) 2

Fed. R. Crim. P. 6(d) 1, 3

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-728

COMPUTER SCIENCES CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the court of appeals erred in reversing a district court order dismissing the indictment against them on the grounds that: (1) the false claims statute, 18 U.S.C. 287, was the sole statutory provision under which they could be prosecuted for their alleged criminal conduct, and (2) the momentary entry of unauthorized persons into the grand jury room violated Fed. R. Crim. P. 6(d).

1. On October 8, 1980, petitioners were charged with various offenses (described below) in a 57-count indictment filed in the United States District Court for the Eastern District of Virginia. The indictment alleged that on March 21, 1972, the General Services Administration (GSA) entered into a contract with the Information Network Division (Infonet) of the Computer Sciences Corporation (CSC). Under the terms of the contract, CSC, through Infonet, was to provide the government with computer

services, such as data processing and computer programming, at a fixed price.

The indictment charged that petitioners engaged in at least three distinct criminal schemes relating to the contract with GSA. First, the indictment alleged that petitioner Luke bribed James Lindsey, a GSA contracting officer, in exchange for inside information to assist CSC in obtaining the contract. Second, the indictment alleged that petitioners fraudulently overcharged the government for computer processing services, in excess of the fixed price authorized by the contract. Third, the indictment alleged that petitioners fraudulently overcharged GSA for a particular computer program known as "BPS/C$T" by falsely representing that the program was a substantially improved version of a program previously provided to GSA at a lower price.

Count 1 charged petitioners with conspiring to participate in the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(d). The enterprise was the Infonet Division of CSC. The alleged pattern of racketeering activity consisted of the following offenses: bribery (18 U.S.C. 201(b)); using the mails with intent to promote and carry on the bribery (18 U.S.C. 1952); mail fraud (18 U.S.C. 1341); and wire fraud (18 U.S.C. 1343). Count 2 charged petitioners with the substantive offense of participating in the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c). The predicate acts constituting the alleged pattern of racketeering activity consisted of essentially the same offenses that were alleged as predicate acts in Count 1. Count 3 charged petitioner CSC alone with using and investing income received from a pattern of racketeering activity in the operation of an enterprise (the Infonet Division), in violation of 18 U.S.C. 1963(a). The remaining counts of the indictment charged various petitioners with

mail fraud, wire fraud, and presenting false claims to an agency of the United States, in violation of 18 U.S.C. 287.[1]

On March 5, 1981, the district court issued an opinion and order dismissing the indictment (Pet. App. 21a-63a; 511 F. Supp. 1125). The court dismissed the mail and wire fraud counts (Counts 4 through 43) on the theory that the facts alleged in those counts also established violations of the false claims statute, 18 U.S.C. 287, and that the false claims statute was the exclusive vehicle for prosecuting on those facts (Pet. App. 34a-40a). The district court also dismissed the RICO counts (Counts 1 through 3) on three grounds: (1) the Infonet Division of CSC was not an "enterprise" within the meaning of the RICO statute; (2) the indictment failed to establish that the racketeering activity benefitted or advanced the Infonet Division; and (3) the mail and wire fraud charges having been dismissed, the RICO counts could no longer stand because the bribery allegation was the only remaining predicate act, thus leaving an insufficient number of predicate acts to form a "pattern of racketeering activity" (Pet. App. 28a-42a). Finally, the court held that the entire indictment was subject to dismissal because, on five occasions during the 18-month grand jury investigation, the proceedings before the grand jury were interrupted by the entrance into the grand jury room of persons not authorized to be present under Fed. R. Crim. P. 6(d) (Pet. App. 55a-62a).

---

[1]Counts 4 through 27 charged petitioners CSC, Luke, Allen, and Marti with causing checks drawn on the United States Treasury to be mailed to CSC offices in Falls Church, Virginia, for the purpose of executing the scheme to defraud the United States, in which CSC overbilled GSA for computer services, in violation of 18 U.S.C. 1341. Petitioner Derrick was also joined in Counts 6 through 27.

Counts 28 through 37 charged petitioners CSC, Luke, Allen, Marti, and Derrick with causing wire transmissions to be sent between computer terminals in the Eastern District of Virginia and a computer center outside the State of Virginia for the purpose of executing a scheme to

On the government's appeal, the court of appeals reversed the district court's order in all respects, except that it affirmed the dismissal of the RICO counts (1-3) against petitioner CSC (Pet. App. 1a-18a).

2. Petitioners contend that because the indictment charges them with violating the false claims statute, 18 U.S.C. 287, the government is precluded from also attempting to prosecute them, for the same alleged misconduct, under the mail fraud (18 U.S.C. 1341), wire fraud (18 U.S.C. 1343) and RICO (18 U.S.C. 1961 *et seq.*) statutes. Accordingly, petitioners argue that the court of appeals erred in reinstating the mail and wire fraud counts and the RICO counts. Petitioners also contend that the court of appeals erred in ruling that dismissal of the indictment was not an appropriate sanction for the momentary entrances by unauthorized persons into the grand jury room during its proceedings.

Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court. The judgment that petitioners are challenging is not a conviction, but

---

defraud the United States, in which CSC overbilled GSA for computer services, in violation of 18 U.S.C. 1343.

Counts 38 through 43 charged petitioners CSC, Luke, Allen, Loux, and Blecker with causing invoices that overbilled GSA for the BPS/C$T computer program system to be mailed from the Eastern District of Virginia to CSC offices in El Segundo, California, in violation of 18 U.S.C. 1341.

Counts 44 through 55 charged petitioners CSC, Luke, Allen and Marti with knowingly causing false claims to be presented to GSA for computer services, in violation of 18 U.S.C. 287. Petitioner Derrick was also joined in Counts 46 through 55.

Finally, Counts 56 and 57 charged petitioners CSC, Luke, Allen, Loux, and Blecker with knowingly causing false claims to be presented to GSA for the BPS/C$T computer program system, in violation of 18 U.S.C. 287.

rather is a ruling on their motion to dismiss the indictment. The court of appeals' decision places petitioners in no different position than they would have been in if the district court had ruled against them in the first instance. Since such an interlocutory ruling would not have been appealable by petitioners (*Roche* v. *Evaporated Milk Association*, 319 U.S. 21, 29-31 (1943); *Heike* v. *United States*, 217 U.S. 423 (1910)), review of the court of appeals' decision at this time would be premature. If petitioners are acquitted following a trial on the merits, their claims will be moot. If, on the other hand, petitioners are convicted, then they will be able to present their present contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. We note, in this connection, that more than two years have elapsed since the filing of the indictment and petitioners have not yet been brought to trial. Petitioners have failed to present any persuasive reasons why this Court should further delay the trial of this case by departing from its usual practice of denying review in interlocutory cases.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

NOVEMBER 1982

---

[2]Indeed, the reasons advanced by petitioners in favor of immediate review (Pet. 9, 11, 20) demonstrate that this case is no different from many other interlocutory cases in which the Court has denied certiorari. Because this case is interlocutory we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.

DOJ-1982-11